

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JOSEPH M. AND DEBRA A. HYLAND

Plaintiff,

VS.

BAYVIEW LOAN SERVICING, LLC, ET AL.,

Defendants.

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Case No. 4:13cv515

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND
ORDER DENYING MOTION TO RECONSIDER AND
DISMISSING PLAINTIFFS' CLAIMS**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On March 21, 2014, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that all remaining claims in this matter should be dismissed for want of prosecution. Specifically, the Magistrate Judge noted repeated failures by *pro se* Plaintiffs to comply with Court deadlines. *See* Dkt. 23.

On April 2, 2014, *pro se* Plaintiffs filed their objections to the recommendation as a Motion to Reconsider (*see* Dkt. 25), arguing that they were unaware of the deadlines and that they are seeking to retain counsel. Plaintiffs further argue that “Defendants are in violation of multiple laws including, but not limited to, the Fair Debt Collection Practices Act, Telephone Consumer Protection Act and the Texas Deceptive Trade Practices Act.” Dkt. 25 at 2. Plaintiffs also claim that “Defendants have not proven to the satisfaction of the Court that they are the lawful owners of the note and have rights to collect funds on the note or foreclose upon the property allegedly encumbered by the note” and that “dismissing this action at this juncture before the facts have been gathered and

weighed, may allow Defendants to bilk investors who have monies due them from specific tranches [sic] of Retail Mortgage Backed Securities.” *Id.*

The court has made a *de novo* review of the objections raised by Plaintiffs as well as Defendants’ response (*see* Dkt. 26) and is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit as to the ultimate findings of the Magistrate Judge. The motion for reconsideration (Dkt. 25) is DENIED. Plaintiffs have not consistently prosecuted their claims in this case, and Plaintiffs have not demonstrated good cause for their failure to do so. The Magistrate Judge has already withdrawn a recommendation of dismissal once (*see* Dkt. 18). Plaintiffs were fairly warned of the consequences of failing to comply with the court’s orders.

Further, Plaintiffs have not taken any action in this case since June 2014, and no attorney has appeared on Plaintiffs’ behalf despite their assertion that it was necessary for them to retain one. The Court notes that Plaintiffs’ last activity in the case was the filing of a four-page response to Defendant Gregory Funding LLC’s Limited Motion for Partial Summary Judgment (*see* Dkt. 28). Plaintiffs’ purported response neither complies with the procedural rules nor a non-movant’s summary judgment burden. Because the Magistrate Judge’s recommendation to dismiss the case was issued prior to the filing of Defendant’s motion for partial summary judgment and because Defendant Gregory Funding LLC did not object to the findings and recommendation in the Magistrate Judge’s report, the court first addresses the recommendation of dismissal. Because the court finds that dismissal is appropriate for the reasons set forth in the Magistrate Judge’s report, the court declines to reach the merits of the motion for partial summary judgment.

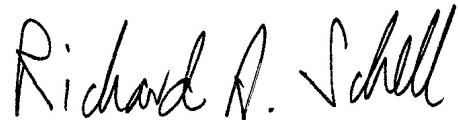
The court also notes that the Fifth Circuit has consistently rejected the kinds of claims propounded in Plaintiffs' motion for reconsideration. *See, e.g., Martins v. BAC Home Loans Serv., L.P.*, 722 F.3d 249, 253 (5th Cir. 2013); *Miller v. BAC Home Loans Serv., L.P.*, 726 F.3d 717, 723 (5th Cir. 2013). Thus, permitting Plaintiffs to proceed, despite their repeated failures to comply with the court's orders or to consistently prosecute their claims, would likely be futile and a waste of judicial resources.

Plaintiffs' failure to comply with court orders warrants dismissal. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Therefore, this case is dismissed for want of prosecution. This matter shall be closed on the court's docket, and all costs shall be borne by the party incurring same.

IT IS SO ORDERED.

SIGNED this the 23rd day of June, 2015.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written with a large, prominent "R". The last name "Schell" is written with a large, prominent "S". The signature is positioned above a horizontal line.

RICHARD A. SCHELL

UNITED STATES DISTRICT JUDGE